APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,239	01/03/2007	Ivan Boule	LSN-4786-8	6941

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EXAMINER
SADLER, NATHAN

ART UNIT	PAPER NUMBER
2189	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action **Before the Filing of an Appeal Brief**	10/589,239	BOULE ET AL.
	Examiner	Art Unit	
	Nathan Sadler	2189	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>21 June 2010</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires <u>5</u> months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☒ Applicant's reply has overcome the following rejection(s): <u>See Continuation Sheet</u>.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>1-9,11-24,26-38,40-46 and 48</u>.

   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet</u>.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.

13. ☐ Other: _____.

/Reginald G. Bragdon/
Supervisory Patent Examiner, Art Unit 2189

Continuation of 5. Applicant's reply has overcome the following rejection(s): Claims 1-9, 11-16, and 40-46 under 35 U.S.C. 112, second paragraph.

Continuation of 11. does NOT place the application in condition for allowance because: The arguments are not persuasive.

In response to the argument that McMahon's master bitmap index is used in two different ways (page 16, paragraph 1), the Examiner is not interpreting McMahon's master bitmap index as the binary data set. The Examiner is interpreting the size parameter to malloc as the binary data set.

In response to the argument that the lookup table of claim 1 does not index levels containing free segments (page 16, paragraph 5 and page 18, paragraph 2), the limitation that it is not used to identify free segments is not present in any of the claims. If Applicants feel they have adequate support for that limitation, they are welcome to amend their claims to incorporate such limitation.

In response to the argument that the bitmaps are distinct from the lookup table and are separately claimed (page 17, paragraph 1 and page 18, paragraph 1), the master bit index serves the claimed purposes and features of both elements. "See In re Kelley, 305 F.2d 909, 915-16 [134 USPQ 397] (C.C.P.A. 1962) (noting that two limitations hypothetically can read on the same structure)." (Intellectual Prop. Dev., Inc. v. UA-Columbia Cablevision of Westchester, Inc., 336 F3d 1308, 67 USPQ2d 1385, footnote 9, CAFC 2003).

In response to the argument regarding determining the appropriate level from the lookup entry (page 18, paragraph 3 - page 19, paragraph 1), McMahon teaches determining a most significant set bit of the binary data set, and determining from the lookup table entry associated with the most significant set bit. Table 1 shows the various memory block sizes. In order to decide whether to use the first or second free list for a 32 byte request, the most significant bit would have to be used.

In response to the argument regarding determining whether a free memory sement is available (page 20, row 2), McMahon teaches doing it in exactly the same way: "Specifically, each bit flag indicates whether at least one memory block within the corresponding group is available. In one embodiment, a bit flag set as a '1' or high logic level indicates that the corresponding group contains at least one available memory block." (Col. 7, lines 19-23).